STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2003-901

April 12, 2004

RANDALL CUSHMAN
Appeal of Consumer Assistance Division
Decision #2002-14860 Regarding AT&T
Communications

ORDER

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this Order, we deny Randall Cushman's request for reconsideration and modification of our February 18, 2003 Order in this Docket.

II. BACKGROUND

In March 2003, Mr. Cushman complained to our Consumer Assistance Division (CAD) about higher than expected charges from AT&T. After investigating the matter, CAD issued its decision on November 24, 2003. CAD found no outstanding issues with Mr. Cushman's business account. With regard to his residential account, CAD found that Mr. Randall had changed carriers for his interstate service on December 11, 2002 from AT&T to Qwest. In so doing, he lost the benefit of his AT&T One Rate Weekend Plan for his intrastate service, therefore reverting to basic rates for his in-state calls (40¢ daytime/20¢ evening/10¢ nights and weekends). When he called AT&T in February 2003 about his rates, they informed him he would need to call his local carrier, Verizon, to de-select AT&T as his intrastate carrier. Mr. Cushman did not call Verizon until May 2003 and by then he owed AT&T $653 on his residential account. After being contacted by CAD, AT&T offered to issue a 25% credit or $146 off his intrastate bill in the interest of resolving his dispute.

On December 10, 2003, Mr. Cushman appealed CAD's decision to the Commission as permitted in Chapter 292 §14(F) of the Commission's rules. On February 18, 2003, the Commission upheld CAD's factual findings and further found that AT&T had not violated Maine statutes or rules in billing Mr. Cushman. On March 8, 2003, Mr. Cushman asked the Commission to reconsider and modify its Order.

III. DECISION

After reviewing Mr. Cushman's request, we decline to reconsider our Order of February 18, 2004. We address below the issues raised by Mr. Cushman.

A. Applicability of Chapter 296

Mr. Cushman questions what authority in Chapter 296 requires a customer to contact the local exchange carrier (LEC) when a customer wants to "deselect" his/her current intraexchange carrier. There is no specific reference in Chapter 296 to this situation nor did the Commission in its Order state that there was one. As stated in footnote 1 of the Order, the designation of the intrastate carrier is controlled by information programmed into the local exchange carrier's switch (in this case, Verizon). AT&T can do nothing physically to change that switch. Nothing authorizes the IXC (here AT&T) to call the LEC and represent that on behalf of the customer the customer wants to "deselect" AT&T. Chapter 296 and 35-A M.R.S.A. § 7106 set out the requirement that carriers cannot change a customer's intrastate interexchange carrier without going through specific verification procedures to ensure that the authorized customer has actually requested the change. The rule does not address the situation when a customer wants no carrier, although the same principle should apply that only the customer can authorize such a change.

The Commission has no rules that state that a customer must contact the LEC when deselecting its intrastate carrier. The Order found it was not unreasonable for AT&T on February 4, 2003 to direct Mr. Cushman to Verizon to deselect AT&T. Mr. Cushman did not contact Verizon until May 2003 and therefore continued to incur charges for intrastate calls at basic rates.

B. Information Provided by AT&T

For the first time in his request for reconsideration, Mr. Cushman claims AT&T never informed him that his One Rate Weekend Plan required him to maintain Interstate and Intrastate service with AT&T when he signed up for service in California and that he simply "transferred" the plan he was on in California to Maine. He claims he received no specific information in 1999 when he moved to Maine. We need not consider this new issue on reconsideration. Nonetheless, he would not have been able to simply transfer the plan from California to Maine as the entire selection process would have started anew once he terminated service in California and obtained a new Maine number from Verizon.

Mr. Cushman's rates are governed by AT&T's rate schedules and terms and conditions filed with the Commission pursuant to 35-A M.R.S.A. § 304. No utility can demand greater or lesser compensation than is provided for in those schedules. 35-A M.R.S.A. § 309. Customers have been long held to be on constructive notice of what is contained in those schedules even if they do not have actual notice of what is contained in those schedules (see *American Telephone and Telegraph Co. v. Central Office Telephone* 118 U.S. 1956 (1998) for discussion of the "filed rate doctrine"). According to AT&T's tariffs, the 8¢ intrastate rate Mr. Cushman was receiving was an add-on to its national One Rate Weekend Plan (for interstate state calls 7¢ except 5¢ on weekends).

C. Business Account Treatment

The CAD decision recites facts about both Mr. Randall's business and residential accounts. At the time of the decision, Mr. Cushman owed AT&T nothing on his business account (which he terminated without a balance due in August 2003). Therefore, there was no dispute for CAD to resolve. Mr. Cushman did not appeal CAD's decision concerning his business account and the Commission did not address his business account in the order on his appeal. Therefore, on reconsideration, there is no need to address issues related to his business account.

D. Other Claims.[1]

Mr. Cushman continues to assert that he should have received notice of the rate change pursuant to Chapter 292 § 9. The Order on Page 3 explains that this section and 35-A M.R.S.A. § 7307 are not applicable as there was no price increase requiring AT&T to change its tariffs or notify its customers. AT&T applied the tariffs it had on file with the Commission which tie its instate rate with taking interstate service from AT&T. Because there have been no violations of Chapter 296, none of the penalty provisions in section 5 or 7 of the Rule apply.

IV. CONCLUSION

For the foregoing reasons we find no reason to reconsider our decision and we decline to do so

Dated at Augusta, Maine, this 12th day of April, 2004.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Diamond
Reishus

[1] With regard to Mr. Cushman's request for a copy of his file, we have directed the Commission's clerk to provide him with a copy.

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.